

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 381

Firefighter Pensions

**SPONSOR(S):** Gibson

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1380

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>5 Y, 0 N</u>	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Local Government Council</u>	<u>7 Y, 0 N</u>	<u>Nelson</u>	<u>Hamby</u>
3) <u>Fiscal Council</u>	<u>21 Y, 0 N</u>	<u>Dobbs</u>	<u>Kelly</u>
4) <u>State Administration Council</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5) <u>  </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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### SUMMARY ANALYSIS

The bill expands the statutory definition of "special fire control district" to include community development districts that perform fire suppression and related services so that these entities may establish Chapter 175 pension plans for their firefighters and become eligible for state premium tax revenues to assist in the funding of such plans.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### **Empower families**

This bill may facilitate the creation of a pension plan for firefighters employed by a community development district providing fire suppression services.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Community Development Districts**

Chapter 190, F.S., the "Uniform Community Development District Act of 1980," sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.<sup>1</sup> There currently are 381 active CDDs in Florida.<sup>2</sup>

Among the general powers granted to a CDD include the authority to: sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders, maintain an office, lease, issue bonds, raise money by user charges or fees, assess and impose ad valorem taxes upon lands in the CDD, and levy and enforce special assessments.<sup>3</sup>

CDDs also have special powers related to the following systems, facilities and basic infrastructures: water management, water supply, sewer, wastewater management, roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas and wildlife habitat.<sup>4</sup>

Additionally, CDDs can be authorized by local governments to address: parks and facilities for indoor and outdoor recreational, cultural and educational uses; fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment; school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; and waste collection and disposal.<sup>5</sup>

The number of community development districts providing fire prevention and control ("Fire CDDs") in existence is not available from the Department of Management Services, the Special District Information Program of the Department of Community Affairs, or the State Fire Marshal and, thus, unknown. However, it is estimated that only a small number of these entities exist.<sup>6</sup> The pay and benefits of any firefighter working for a Fire CDD are determined by the Fire CDD.

##### **Municipal and Special District Firefighter Pensions**

Chapter 175, F.S., sets forth the minimum benefits and standards for municipal and special district firefighter pension plans. This chapter creates a purely voluntary program whereby these local

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<sup>1</sup> Section 190.002, F.S.

<sup>2</sup> Fla. Dep't of Comm'y Aff., Div. of Hous. and Comm'y Dev., Special Dist. Info. Program, *Create Your Own List of Special Districts* (search "community development" under "Functions to Include")(visited Mar. 14, 2005) <<http://www.floridaspecialdistricts.org/OfficialList/criteria.asp>>.

<sup>3</sup> Section 190.011, F.S.

<sup>4</sup> Section 190.012(1), F.S.

<sup>5</sup> Section 190.012(2), F.S.

<sup>6</sup> Conversations and e-mails with attorneys representing CDDs (Jan. and Feb. 2005).

governments may receive state-collected taxes, imposed on property insurance premiums, with which to fund retirement programs for local firefighters.<sup>7</sup> There currently are 20 special fire control districts and 159 municipalities that have established Chapter 175 plans.<sup>8</sup> These plans had revenues of approximately \$66,319,992 in 2004; \$5,096,380 of those revenues were generated by special fire control districts.<sup>9</sup>

Section 175.032 (16), F.S., defines “special fire control district” to mean “a special district, as defined in s. 189.403(1), F.S., established for the purposes of extinguishing fires, protecting life, and protecting property within the incorporated or unincorporated portions of any county or combination of counties, or within any combination of incorporated and unincorporated portions of any county or combination of counties. The term does not include any dependent or independent special district, as defined in s. 189.403(2) and (3), respectively, the employees of which are members of the Florida Retirement System pursuant to s. 121.051(1) or (2).”

The following sources provide funding for the firefighters’ pension trust fund:

- payment from the “premium tax”—the net proceeds of the 1.85-percent excise upon fire insurance companies, fire insurance associations, or other property insurers on their gross receipts on premiums from holders of policies covering real or personal property within the legal boundaries of the municipality/special fire control district;
- payment of a designated percentage deducted from the salary of each uniformed firefighter;
- payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;
- mandatory payment from the municipality/special fire control district of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of ch. 112, F.S.;
- all gifts, bequests and devises when donated;
- all increases in the fund by way of interest or dividends on bank deposits; and
- other sources or income authorized by law for the augmentation of such firefighters' pension trust fund.<sup>10</sup>

Chapter 175, F.S., provides requirements for the retirement,<sup>11</sup> disability,<sup>12</sup> death<sup>13</sup> and presumed injuries<sup>14</sup> of municipality/fire control special district firefighters under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter pension plan of a municipality/special fire control district.<sup>15</sup> Actuarial deficits are not, however, obligations of the State of Florida.<sup>16</sup>

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<sup>7</sup> See, *The City of Orlando v. State of Florida Department of Insurance*, 528 So. 2d 468 (Fla. 1<sup>st</sup> DCA 1988).

<sup>8</sup> Dep’t of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep’t).

<sup>9</sup> *Id.*

<sup>10</sup> Section 175.091, F.S.

<sup>11</sup> Section 175.162, F.S.

<sup>12</sup> Section 175.191, F.S.

<sup>13</sup> Section 175.201, F.S.

<sup>14</sup> Section 175.231, F.S. (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal).

<sup>15</sup> Section 175.341, F.S.

<sup>16</sup> Section 175.051, F.S..

### Effect of Proposed Changes

This bill expands the Chapter 175 definition of “special fire control district” to include community development districts that perform fire suppression and related services. As a result, these entities may establish Chapter 175 pension plans for their firefighters and become eligible for state premium tax revenues to assist in the funding of such plans. Only those CDDs that have their own fire departments and equipment, as provided in s. 175.041, F.S., and actually employ their own firefighters will qualify.

CDDs may not exercise the special powers of “fire prevention and control” without the consent of the appropriate local government.<sup>17</sup> Therefore, it is assumed that there will not be a conflict between these entities and municipal or special fire control districts over premium tax revenues.<sup>18</sup>

#### C. SECTION DIRECTORY:

Section 1: Amends subsection (16) of s. 175.032, F.S., to amend the definition of “special fire control district.”

Section 2: Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance companies are obligated to report and remit the excise tax on property insurance premiums pursuant to s. 175.101, F.S. These companies may be impacted by the addition of a new entity authorized to receive these taxes.

#### D. FISCAL COMMENTS:

None.

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<sup>17</sup> Section 190.012(2)(b), F.S.

<sup>18</sup> Department of Management Services, Substantive Bill Analysis for HB 381, dated November 25, 2005, on file with the Local Government Council.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Drafting Issues

##### **Authority to Collect the Tax on Property Insurance Premiums**

The Department of Management Services has suggested that ch. 190, F.S., which governs CDDs, may need to be amended to give CDDs the authority to levy the premium tax.<sup>19</sup> Although s. 175.101(1), F.S., provides that each special fire control district “may assess and impose” the premium tax, the sponsor may wish to consider the following amendment to s. 190.011, F.S.:

(17) To assess and impose the state excise tax authorized under s. 175.101, if exercising the powers permitted under s. 190.012(2)(b).

##### **Different Types of Districts**

CDDs and special fire control districts are different types of independent special districts which are governed by two different chapters of the Florida Statutes: chs.190 and 191, respectively. This bill, however, includes certain CDDs in the definition of special fire control district for purposes of ch. 175, F.S. Given the different legal and statutory status of these two types of districts, it would be better to define and provide for CDDs throughout the chapter. Yet, given the unknown and anticipated low number of Fire CDDs, such a substantial amendment to ch.175, F.S., may not be warranted.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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<sup>19</sup> Ibid.